IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

SUMMARY SUIT No.1601 of 1989

SYNDICATE BANK, a body corporate constituted and established under the Banking Companies (Acquisition and Transfer of Undertakings),Act, 1970, having its Head Office at Manipal, Karnataka State and also amongst other Branches a Branch Office at Kalbadevi, Bombay - 400 002. **..PLAINTIFF.**

VERSUS.

1. M/s K. K. Steels, a Proprietorship concern of Mr Rameshkumar Khanna, carrying on business at Kanukunj, 4th Floor, L.J. Road, Mahim, Bombay - 400 016.

2. Rameshkumar Khanna, Indian Inhabitant of Bombay, the Proprietor of the Defendant No.1, carrying on business at Kanukunj, 4th Floor, L.J. Road, Mahim, Bombay - 400 016.

3. Kamal Mehra, Indian Inhabitant, residing at Usha Niwas, Ist Floor, Shivaji Park, Mahim, Bombay - 400 016.

4. M/s. World Wide Exports, carrying on business of 101, Mittal Court, Nariman Point, Bombay 400 021 and also having Office at 390, Subhashnagar Estate, Deliel Road, Chinchpokli, Bombay - 400 011. **..DEFENDANTS.**

Mr O. S. Kutty with K. A. Suryanarayan, Advocate for the Plaintiff.

None for the Defendants.

CORAM: V.C. DAGA,J.
DATED: 4th DECEMBER,2007.

JUDGMENT:
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1. The plaintiff-bank has filed the suit

against the defendants for recovery of sum of Rs.1,29,138-00 with interest thereon @ 18% per annum on the principal sum of Rs. 94,857.80 ps. from the date of suit till payment in full and final.

2. Plaintiff-bank has taken out summons for judgment against the defendant Nos. 1, 2 and 4. By an order dated 12.3.1990, Mr S. R. Sathe, J. was pleased to grant unconditional leave to the defendant No.4 to defend the suit. Consequently, summons for judgment was heard against the defendant nos. 1 and 2 only.

3. By an order dated 19.3.1991, Mr Dhanuka, J., was pleased to grant conditional leave to the defendant Nos. 1 and 2 to defend the suit on the condition that the defendant Nos. 1 and 2 would deposit the sum of Rs. 60,000/- in the Court within eight weeks from the date of the said order. They were directed to file written statement within four weeks thereafter. Suit was ordered to be tried as commercial cause. Discovery and inspection were directed within two weeks. Accordingly, the defendant Nos. 1 and 2 deposited Rs. 60,000/- on 17.5.1991 and filed their written

statement.

4. By an order dated 10-1-1994 Mr N. D. Vyas,J was pleased to pass ex parte decree against the defendant No.3, since the defendant No.3 chose to remain absent and did not file any appearance inspite of service, the suit claim against the defendant No.3 was decreed with interest @ 18% per annum from the date of suit till repayment in full and final.

5. The aforesaid chronology of events left the plaintiff-bank and defendant Nos. 1 and 2 to fight this litigation.

FACTUAL MATRIX:-
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6. The defendant No.1 is a proprietary concern of the defendant no.2. The defendant No.3 is a guarantor and the defendant No.4 is a Drawee and acceptor of three Bills of Exchange/Hundies drawn by the 1st defendant in favour of the plaintiff-bank.

7. The plaintiff-bank, as desired by the defendant No.1, has sanctioned various credit limits from time to time which was further

renewed with Bill Discounting Limit of Rs. 2,50,000/- along with other credit facilities. The defendant Nos. 1 and 2 are the drawers of Bills of Exchange. The execution of Bills of exchange is not disputed by the defendant Nos. 1 and 2. The consideration for the said Bills of Exchange is not in dispute.

8. The aforesaid three negotiable instruments were duly accepted by the defendant No.4 when presented to the plaintiff for the purpose of discounting at Bombay. These three Bills were discounted by the plaintiff on 11.12.1986, 4.2.1987 and 25.2.1987. Details of which are given in para 4 of the plaint. The plaintiff-bank advanced to the first defendant the sum of Rs.94,857.80 ps against the said three Bills of Exchange/Hundies drawn upon the defendant No.4 and in favour of the plaintiff bank for valuable consideration.

9. The third defendant had accepted the aforesaid three Bills of Exchange and had promised to pay the amount due under the said Bills of Exchange on its due dates to the plaintiff-bank as mentioned therein.

10. When the plaintiff issued notice of demand by its letters dated 7.3.1989 and 17.3.1989, there was no reply.

11. Plaintiff-bank has also filed affidavit of plaintiff of one Shri Manjunath M. Ganguli in lieu of evidence alongwith affidavit seeking permission to lead secondary evidence. For the reasons stated, leave in that behalf was granted. Consequently, all those documents were treated as proved in accordance with the law of evidence.

12. The advances made by the plaintiff-bank are documented and are backed by loan documents. The liability of the defendant Nos. 1, 2 and 4 has been proved by the plaintiff-bank by filing affidavit in lieu of evidence of one Shri Manjunath M. Ganguli dated 4.12.2007; wherein, all the documents are proved by them.

Issues for determination:

13. Pursuant to the rival pleadings of the parties, issues were framed reading as under:

ISSUES:

(1) Whether the plaintiffs prove that they have validly drawn the following three Bills of Exchanges?

(a) Bill of Exchange No.DD/HO/725 dated 8.12.1986 for Rs.32,827.50

(b) Bill of Exchange No.DD/HO/730 dated 27.01.1987 for Rs. 29,414.00

(c) Bill of Exchange No.DD/HO/735 dated 25.02.1997 for Rs. 32,616.30

Rs. 94,857.80

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(2) Whether the defendant Nos. 1 and 2 prove that they have not executed the aforesaid Bills of Exchange and that they are not liable to pay for the same?

(3) Whether the plaintiffs prove that the three Bills of Exchanges referred to in para 4 of the plaint aggregating to Rs. 94,857.80 have been duly accepted by the Defendant Nos. 1 and 2 and that they are liable to make payment to the plaintiffs on the respective due dates?

(4) Whether the Defendant No.4 prove that it has not accepted the Bills of Exchanges and that it is not liable to make payment of the same?

(5) Whether the Defendant No.4 prove that it has not accepted the payments of the Bills of Exchanges and hence, it is not liable to make payment?

(6) Whether the plaintiffs are entitled for a decree as claimed for?

(7) As to what order and decree?

FINDINGS:

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(1) (a),(b) and (c) : In the affirmative.

(2) In the negative.

(3) In the affirmative.

(4) In the negative.

(5) In the negative.

(6) As per final order.

(7) As per final order.

REASONS:

14. Nobody has appeared on behalf of either of the defendants to cross-examine the affiant, produced by the bank nor the legality and validity of the documents are challenged by the defendants.

15. Under the above circumstances, I am constrained to hold that the plaintiff-bank has proved issue nos.1 and 3. The burden of which was on the plaintiff-bank;whereas, the defendants have failed to prove issue Nos.2, 4 and 5 the burden of which lay on them.

16. In the aforesaid premises, the suit is

liable to be decreed in toto. Hence the following order:

(i) The suit is decreed in terms of the prayer clause incorporated in the plaint.

(ii) The defendants do pay jointly and/or severally Rs.1,29,138.00 with interest at the rate of 18% per annum on the principal sum of Rs. 94,857.80 ps. from the date of the suit till payment or part payment, subject to grant of adjustment of Rs.60,000/- deposited with this Court on 17.5.1991. The plaintiff shall be entitled to withdraw the amount deposited by the defendant Nos. 1 and 2.

(iii) Decree be drawn in terms of this order.

(V.C.DAGA,J.)